

PAGOSA DAILY POST

Tangled Waters, Part One

Bill Hudson | 7/7/08

At their regular monthly meeting last Tuesday, July 1, the Pagosa Springs Town Council found themselves trying to untangle two big — and seemingly independent — water issues that have somehow become dependent upon one another as a result of ongoing negotiations with the Springs Resort.

The Springs Resort has been leasing the so-called “waste water” from the Town’s municipal geothermal heating system since 1995, with the current lease dating from 1997. Recently, the resort proposed that the Town increase its delivery of geothermal mineral water from 200 gallons per minute (200gpm) to “400gpm or the full extent of the Town’s maximum usage.”

That issue has become tangled up with the Town’s controversial “river restoration” plan — a plan to remove and relocate numerous grant-funded “Fishing is Fun” structures added to the San Juan River thirteen years ago by noted hydrologist Dave Rosgen, and build a “white water park” as designed three years ago by engineer Gary Lacy of Recreational Engineering and Planning (REP).

The first structure designed by REP — the so-called “Davey Wave” — caused a three year dispute with the Army Corps of Engineers, and its functionality was seriously questioned at last month’s Town work session by hydrologist Rosgen. Click here to read the [Post article on Rosgen's presentation](#). *Continued...*



The rafting and boating water feature known as the "Davey Wave" has proven popular with all ages as a recreational hot spot in the normally mild-mannered downtown section of the San Juan River. Now the Town is planning to relocate the feature, following a request from the nearby Springs Resort.

Before it can move ahead with any more river work, the Town is being asked to remove the Davey Wave. That fact, and other issues surrounding the REP plan have caused at least one Town Council member to ask for further study. At Tuesday’s meeting, Town Councilor Mark Weiler referred to Rosgen’s criticism of Lacy’s white water park designs.

“Based on the presentation that we had from Mr. Rosgen at our last meeting, I have some serious confidence issues about the people who have provided the plans for the river restoration kayak park,” Weiler told the

Council, choosing his words carefully. “In doing a little bit of research, it appears to me that [REP] did not give good council to the Town or to the Town Manager about the process we were engaged in, and they should have known the ramifications of what they were suggesting we do as a town.

“I would like to review their agreement and investigate the outcome of severing our relationship with them — and starting this process anew with people who have had success in dealing with the regulatory agencies we’ll have to deal with in order to get this project approved.”

Going back to square one on the river restoration project — which, considering Pagosa’s unstable financial situation, might mean the death of that project — might also have ramifications for the Springs Resort negotiations, since the resort’s representative Bill Whittington is holding out promises of river easements as part of its negotiating package.

At least one of those easements relates to the white water park — and might become moot if the river restoration plan is changed.

As noted in my [earlier Post series](#) on the geothermal leases, the key negotiators for the Springs Resort, Whittington and Matt Mees, have assured the Town that the increased water delivery will not significantly impact the Great Pagosa Spring Aquifer, the mineral water source that appears to lie mainly beneath Pagosa’s downtown area and which feeds several active wells and springs owned by various parties.

Dangling in the midst of these two tangled water issues is a Planned Unit Development (PUD) by the Springs Resort — a \$250 million expansion project stretching from the resort itself south to the Pagosa Springs Community Center, and including nearly the entire travertine meadow between Hot Springs Boulevard and the curving San Juan River as it heads west and then south out of town.

Apparently, Springs Resort representative Bill Whittington wants a blank check from the Town — in regards to his Planned Unit Development (PUD) and also in regards to future water rights sought by the resort — in exchange for several easements that would allow, among other things, the continuation of the REP white water park project.

Although Weiler apparently wants the kayak park to go back to the drawing board with a new designer such as Rosgen, the current REP plan apparently has its supporters on the Council.

“I wasn’t at the meeting when Rosgen spoke,” noted Councilor Angela Atkinson, “but I would like to give Gary Lacy the opportunity to respond [to Rosgen’s criticisms]. I think it would have been only fair to have them both in the same room, to understand what the allegations are and to allow them to respond. We sent out an RFP [in 2004] and Rosgen got the RFP and didn’t respond to the request — so to start all over has ramifications, and I think we need to understand those ramifications in terms of the entire public process that we went through, and the time that people invested and that this Council supported at that time.”

“So before we jump to severing the relationship, I would like to have in writing what the allegations are. I would like to allow Gary Lacy to respond, and then I would like us to think through the costs and benefits of starting the process over again.”

Atkinson’s comments about the public process are noteworthy perhaps, because to my knowledge, the Town had only very limited input from the general public before sending out the RFP to which Lacy responded. My sense from interviews with former Town Manager Mark Garcia back in 2005 was that Garcia and a small group of white water enthusiasts had essentially chosen Recreational Engineering and Planning before even sending out the RFPs, that Rosgen had in fact responded but his ideas had not agreed with the small group’s pre-conceived plans, and that the general public had been given very little notice or chance to give input before the

plan was approved by the Town Council.

In fact, looking through old Town Council minutes, I have been unable to find any evidence that the Council ever approved the Lacy plans, nor a specific budget for the project. To my knowledge, the Town has never publicly announced how much money it has already spent on the white water park planning.

Following the installation of the Davey Wave — which the Town did without the proper Army Corps of Engineers (ACOE) permits, and without the permission of the Colorado Division of Wildlife which had funded the Rosgen structures — Garcia and Lacy became embroiled in a three year negotiation with the ACOE, and the Lacy plans were redrawn to better align with the ACOE requirements. As I understand it, part of the revision process included a proposal to relocate the Rosgen “Fishing is Fun” structures farther downstream, to make room for white water structures in the downtown stretch.

But in order to relocate those structures, the Town needs to get property owner approvals to grant them easements along the river that would allow fishermen access to the structures. The Town already obtained such easements when the original structures were placed thirteen years ago; now they would need a whole new set of easements.

So far the Town has not obtained any of those needed easements.

And one of the property owners from whom they need easements is the Springs Resort — with their own long list of requests to negotiate. The Springs Resort is also offering easements for, and assistance with, other planned Town projects.

How badly does the Town want to build this controversial kayak park downtown? What would they be willing to give up to the Springs Resort, to support a river project — which, to my knowledge, has never had widespread public support?

And how much, exactly, is the Springs Resort asking for, in exchange for easements?

Tangled Waters, Part Two

Bill Hudson | 7/8/08

Let’s say, just for the sake of argument, that you had recently purchased a lovely resort in a funky little Colorado town — a town with really only a handful of attractive features. Let’s say that those attractive features include a funky small town atmosphere, some of the most glorious scenery in the world, and an historic, well-known geothermal mineral spring reputed to heal various ailments.

Let’s say that your little resort has water rights access to some of that healing water spring, maybe 100 gallons per minute (gpm), and also has the cooperation of your local town government, who has been willing to lease you another 200gpm from their own geothermal wells, originally drilled to provide low-cost geothermal winter heating to downtown businesses and schools.

Let’s also say that your multi-million-dollar resort is very attractive and quite successful, and has access to the land and probably the potential to expand to, say, ten times its current size — given the right kind of economic climate. You might even want to spend up to \$250 million on such an expansion project.

If only you could get your hands on enough of that precious healing water.

Again, just for the sake of argument, let’s say that your only competition in the ‘healing waters spa’ game were

a couple of under-capitalized local families who were happy to get by with modest business success.

To make things more interesting, let's also say that you were a former race car driver, who had pleaded guilty in 1986 to drug smuggling, tax evasion and money laundering, and had been sentenced to fifteen years in prison by United States District Judge Jose A. Gonzalez. Let's also say that you had been ordered to turn over \$7 million in property, race cars, boats and planes allegedly purchased with your drug-smuggling profits.

[Read the New York Times, January 6, 1987](#)

In such a situation, the ownership of a small town Colorado 'healing waters' resort might be your chance to turn over a new leaf, and do something beneficial for your community — even if the legal ownership of the resort were in your daughters' names.

If only you could get your hands on enough of that precious healing water.

Two months ago, the Town of Pagosa Springs sent out a request for proposals, looking for local businesses who might like to lease geothermal water from the currently unused Rumbaugh Well near the CenturyTel offices on Lewis Street. Local businessman Jeff Greer — owner of Summit Ski and Sports and a currently-vacant storefront on Main Street — had already filed for water rights on another downtown 'healing waters' well. When Greer submitted his response to the Town's request by the legal deadline, his was the only submission.

Two days after the submission deadline, the Springs Resort — a successful small town resort with plans for a \$250 million expansion, and a thirst for geothermal mineral water — asked the Town to allow them to submit a proposal after the legal deadline. The Town Council voted to deny that request.

It looked like the Town would grant Greer 35gpm of geothermal mineral water from the Rumbaugh Well as indicated in Greer's proposal, in exchange for an annual payment of \$4,500.

At last week's Town Council meeting, the approval of Greer's lease was on the agenda. That approval never happened, but was instead tabled for a future meeting. Mayor Ross Aragon did not give a complete explanation for the delay, but hinted that the Springs Resort might have questions about the legality of Greer's lease.

The Springs Resort has an interesting lease with the Town of Pagosa Springs, dating from 1997. I am not a lawyer, so I cannot claim to understand the full implications of the existing lease. One obvious point, however, is made in the 'Whereas' section that comes at the beginning of most Town ordinances:

“WHEREAS, the Town believes that a new lease of geothermal water with the [Pagosa Springs Resort Company] will provide a positive benefit to the Town's economy.”

The “new lease” replaced an earlier 1995 lease, which had expired. The current lease expires in January 2012.

Click here for a [PDF File of the current lease](#).

It appears that the Springs Resort is paying the Town “One Thousand Dollars (\$1,000) per each 100 gpm of the 200gpm supplied during one heating season by August 31 of each year.” The lease also stipulates, “The Company has the right to determine how much water it will take each year but the Company shall pay the Town not less than Two Thousand Dollars (\$2,000) per heating season for the 200gpm.” The Springs Resort agreed to pay double that amount for water delivered by the Town during the non-heating season — should such water become available. The Town did agree to deliver water to the resort during the non-heating season, though I am not clear when or how that decision was made.

At any rate, it appears that the lease started off in 1997 costing the Springs Resort about \$6,000 a year, assuming that they used the full allotment of 200gpm year-round. The lease specifies a minimum payment of \$2,000 a year.

It is somewhat curious to compare the apparent price the Springs Resort is paying for its ‘healing water’ with the amount Clarissa and I pay for our drinking water from Pagosa Area Water and Sanitation District. When our last water bill arrived, we were charged \$2.70 per 1,000 gallons for the first 8,000 gallons, and \$5.10 per 1,000 gallons for any water over 8,000 gallons.

In other words, for using 10,000 gallons of drinking water, we pay about \$30. We use this water only for our home. If we were a commercial business making a profit from our water use, we would be paying considerably more than \$3.00 per 1,000 gallons, I would assume.

What is the Springs Resort paying for its precious mineral water? I’m not a lawyer or an accountant, but my common sense suggests the following:

The Town lease specifies, not “gallons” but “gallons per minute.” So in one minute, the Springs Resort can use — according to the current lease — 200 gallons. In one minute. That means, in one hour, the resort can use 12,000 gallons of the Town’s precious mineral water.

That comes to 288,000 gallons per day. If the Springs Resort chooses to use its full allowance of leased water through the heating and non-heating seasons, it could conceivably use over 105 million gallons of precious healing water per year — at a leased cost of about \$6,000, for a commercial use.

That comes to a price of... let’s see what my calculator says:

Less than 6 cents per 1,000 gallons.

The current lease also states, “The Company shall maintain records and furnish to the Town annually records of the Company’s geothermal water supply and the disposition thereof in a form agree upon by the Company and the Town.”

As far as I can gather, the only geothermal operation in Pagosa Springs with a functioning water meter, for accurately measuring water use, is the Town geothermal heating plant. I have been told that the Springs Resort has no water meters on its incoming pipeline from the Town’s wells. I have not yet looked at the records which the resort is maintaining on the Town’s behalf.

In Part Three, we’ll look at the Town’s current negotiations with the Springs Resort and with Jeff Greer, in light of the Springs Resort’s plans to build a \$250 million expansion — and their resultant need for a reliable, cheap, very-long-term supply of geothermal water for heating, sidewalk de-icing, and of course, additional ‘healing water’ baths.

We’ll also look at the whole idea of putting all of your egg-smelling water in one basket.

Tangled Waters, Part Three

Bill Hudson | 7/9/08

As part of the negotiations between the Town and the Springs Resort, resort representative Bill Whittington has proposed that the Town and the resort “resolve and reach an overall agreement” on thirteen issues. Besides the requested agreement to increase the Town’s geothermal water delivery to “the full extent of the Town’s

maximum usage”, Whittington is asking for a 50-year lease on the geothermal water delivery, and that the Town cease submitting objection letters “as it relates to renewing any existing water rights or future filings on new water rights.” Specifically, the Town should agree that it “will not oppose the Springs filing for additional water rights out of the main spring.”

In summary, the Springs Resort wants full use of the Town’s adjudicated geothermal water from its main well, plus a promise that the Town will not object to the Springs filing for new water rights from the Great Pagosa Hot Spring — or from any of the other several wells and springs owned by the resort.

In the past, the Town of Pagosa Springs has, in the interest of protecting its own access to geothermal water, filed objections to practically every new water rights filing in the county. It appears that other geothermal water rights owners have also done the same. I understand that a failure to file objections can limit the Town's legal options into the future.

Specifically, the Town has objected to the Springs Resort filing for rights to the Town’s geothermal heating plant outflow.

For one thing, it’s not clear that Colorado water law allows the assignment of rights to “waste water” from a geothermal plant. And for another, the Town Council voted at its last meeting to explore the possibility of a downtown municipal greenhouse, which might be heated by geothermal waste water.

Meanwhile, Whittington is apparently asking the Town to step aside and allow the resort unhindered access rights to the Great Pagosa Springs Aquifer.

Part of the exchange Whittington is offering include access easements needed by the Town if it plans to go ahead with its San Juan River Restoration project. That controversial project appears to have been “personal” project of former Town Manager Mark Garcia, initiated with very little Town Council oversight and even less community participation. In a 2005 interview with the Town’s then-Special-Projects-Coordinator Julie Jessen (now Julie Simmons), I was told that the citizen committee that approved the proposed project consisted of only a handful of people: Garcia, Jessen, boating enthusiast Anthony Doctor, developer Fred Schmidt and a couple of other names I don’t recall.

The project as currently sketched is actually not a “restoration” in any sense of the word, but rather an attempt to make a new white water park out of a relatively mild-mannered, mildly sloping river.

The Springs Resort is demanding that the only completed portion of the “restoration” project — the much-criticized and equally-much-admired Davey Wave — be removed, due to its negative impacts on river erosion, sediment build-up, and “the desert effect it has had on the area in front of the Chamber of Commerce...”

At this month’s regular Town Council meeting, as noted in [Part One](#), Council Mark Weiler expressed his lack of confidence that the project, which so far appears to have been bungled by Garcia and designer Gary Lacy of Recreational Engineering and Planning. Mark had suggested that perhaps the Town needed to start the project over with a new designer.

At that same meeting, Councilor Stan Holt noted the role that additional easements will play in the project completion.

“I doesn’t really matter who we use to design the river features — though to start over would be very expensive and time-consuming. But if Mr. Whittington isn’t going to agree to an easement, it really doesn’t matter which consultant we use, it’s not going to get done. So I think we need to come to a consensus here, and get an agreement before we even consider what consultant we’re going to use or whether we are going to start over.

Without Whittington's agreement, we're just wasting our time."

"I feel like we need to be very clear what our vision for the river is, and let that dictate what our actions are," responded Councilor Angela Atkinson. "I think, to try and presume, or try and second guess whether [Whittington] is going to say yes or no — I think we need to be the leaders in this process. And half of these Council members are new — including myself — so we never approved [the current] plan, and if this plan doesn't fit this Council's philosophy, I think we need to start from there. I think that would be a shame, frankly, but we need to decide what we want for the river and let that guide the negotiations [with Whittington.]"

The 1995 "Fishing is Fun" river enhancements, designed by hydrologist Dave Rosgen, cost the Town about \$381,000 — including over \$100,000 in easement acquisition costs. Does the current Town Council really want to spend hundreds of thousands of dollars to tear out those enhancements and add more "Davey Wave" structures of the type already causing issues at the one existing location?

And if so, is the Town willing to trade the full amount of its geothermal water rights — and agree to stop objecting to all future water rights acquisitions by the Springs Resort?

Obviously, the Town Council needs to make some crucial philosophical decisions about the river enhancements and about the allocation of the Town's geothermal water resources — though some decisions may be limited by Colorado law and by the Town Charter. In a May 9 response to Whittington's 13 point negotiating list, interim Town Manager Tamra Allen noted, "The Town does not have the ability to extend a lease to Springs Resort Company for a term longer than ten (10) years, according to Section 10.4C of the town charter.... The town may, in the future, consider issuing an RFP to determine appropriate market rate for the leasing of the geothermal water."

Allen also wrote, "The town will retain the right to object to or intervene in any filings that are made on geothermal water rights within the community. It has come to our attention that the Springs Resort has filed a request for adjudicated rights to the town's effluent. This filing for geothermal water is in violation of the town's charter (Section 10.4C) which states, 'Any such franchise, right or privilege [lease] shall terminate automatically if necessary to preserve or maintain the property or right or the town's ownership [of its geothermal water rights.] Based on this section of the charter, the town requests the Springs resort immediately withdraw its request for a waste water right from the Town of Pagosa Springs Well PS-5 (440gpm summer time and 370gpm winter time)..."

Tangled Waters, Part Four

Bill Hudson | 7/10/08

I have to admit, at this point in researching and writing a multi-part article about the tangled water issues currently facing all of us — the Pagosa Springs Town Council, the Springs Resort, downtown businessman Jeff Greer, and the citizens of our little 1,800-person town and our 10,000-person county — I am still confused about the "easement issue."

It's clear, from Springs Resort representative Bill Whittington's January 22, 2008 memo — and from the Town Council's non-decisive discussions about "river easements" at recent meetings — that the Town needs some kind of river easement from the resort before it can go ahead with its planned white water park enhancements in the San Juan River. It's also clear that Whittington is proposing some kind of negotiated agreement that would trade those "easements" for a very sizable annual delivery of geothermal mineral water from the Town's PS-5 Well — up to 200 million gallons per year, by my calculations.

What exactly are those easements, and why does the Town need them? Those waters are still a bit muddy for

me.

At a Town Tourism Committee (TTC) meeting several weeks ago, the subject of easements was brought up during a discussion of the Pagosa Quality Fishing Project, a group of local fishermen and businessmen who were asking the TTC for \$58,000 to be spent on large stocked trout and related marketing and PR. The stretch of river slated for those trout stockings would be the downtown San Juan — including the stretch that was enhanced in 1995 by hydrologist Dave Rosgen’s “Fishing is Fun” boulder structures. Those “Fishing is Fun” structures were partly funded by the federal government, through a grant overseen by the Colorado Division of Wildlife (DOW).

The subject of easements came up at that meeting, as well.

As I noted in yesterday’s installment, the 1995 “Fishing is Fun” river enhancements cost the Town about \$381,000 — including over \$100,000 in easement acquisition costs. From what I can gather, the federal government and DOW — as part of their granting process for “Fishing is Fun” — required the Town of Pagosa Springs to obtain access easements along the San Juan River. This is quite sensible, considering the nature of fishing, which normally involves a person standing on the banks of a river, casting a line into the water and hopefully pulling out one or more fish.

Why would a town like Pagosa Springs spend nearly \$400,000 to build structures aimed at enhancing fishing habitat, unless the public had access along the river — places to stand and cast? According to Colorado real estate laws, a property owner with riverfront property owns the riverbanks and the riverbed under the water, out to the centerline of the river itself. So a stretch of river with private owners on both banks is not legally accessible to the fishing public.

As it turns out, most of the “Fishing is Fun” structures were placed in the San Juan in a stretch where at least one side of the river is owned by the Town, and where access is provided by the Town’s Riverwalk trail system. Any fisherman — local resident, or visitor — can easily fish the “Fishing is Fun” stretch of the San Juan, standing on Town property.

So why did the Town need to spend \$100,000 in 1995 for “easement acquisition costs?” What did the Town obtain with those monies?

At the TTC presentation by the Pagosa Quality Fishing Project, a local fisherman stated that, according to his research, the Town had obtained a ten-foot-wide easement all along the San Juan River, from the east end of the downtown stretch, through town and down to the 6th Street Bend. If this research is correct, it implied that a fisherman can easily fish all along the downtown stretch of the San Juan — not only in the areas where the Town owns the riverbanks, but even along privately-owned stretches of the river.

This fact, if true, would make the Pagosa Quality Fishing Project much more valuable, since the whole stocked stretch would be accessible.

Putting two and two together, I naturally assumed that the \$100,000 spent on easement acquisitions in 1995 helped pay for this ten-foot-wide fishing easement. I have not verified those facts.

So here’s my (only partly-informed) version of the easement discussion, as of two days ago:

The Town spent \$400,000 installing fishing enhancements in 1995 — which included purchased riverbank easements all along the downtown San Juan River, so fishermen could enjoy the fish that were thriving as a result of those 1995 enhancements. The enhancements, incidentally, also made kayaking and rafting more fun during times of high water flow.

Then in 2004, Town Manager Mark Garcia and a small group of boating enthusiasts became excited about the possibility of creating a white water kayaking park in the same stretch of the San Juan where the “Fishing is Fun” structures had been installed nine years earlier. Garcia signed two Contractor Agreements with engineer Gary Lacy of Recreational Engineering and Planning (REP) in early 2005, agreeing to pay REP in the neighborhood of \$55,000 to design biddable construction documents for a white water park and oversee construction of the new park — work which supposedly included obtaining the proper permits for the river work.

Before proper permits were obtained, however, Garcia and Lacy moved into the San Juan River in March 2005 with a small crew of heavy equipment operators provided at no cost by Wolf Creek Ski Area owner Davey Pitcher. The crew removed several “Fishing is Fun” structures and built a U-drop white water feature.

This work elicited a “stop work immediately” order from the Army Corps of Engineers and DOW, and led to three years of contentious negotiations with those two government entities. Lacy’s plans were modified and the Springs Resort — which had initially expressed some support for the new U-drop feature — asked to have the new “Davey Wave” removed.

As I understand it, the Town still has plans to remove ALL of the “Fishing is Fun” enhancements south of the Hot Springs Boulevard bridge, and replace those enhancements with new Lacy-designed U-drop structures. As a result of some apparent negative impacts of the current “Davey Wave,” support for the white water park by the Springs Resort has become more tentative.

And for some reason, this new work will entail the acquisition of new easements, from the resort and several other property owners, even though numerous easements were obtained in 1995.

My understanding of the new easements is admittedly fuzzy.

Because the DOW is looking at losing the fishing enhancement structures it helped fund. DOW has asked the Town to mitigate the loss of those structures. From listening to Town Council discussion, I had the impression that the revised Lacy plan was simply moving the “Fishing is Fun” structures farther downstream — and that’s why the Town needed new easements, so that fishermen could access the new enhancement locations. Since the DOW had helped fund the structures expressly for fishing enhancements, it wouldn’t be a true mitigation — in my mind — to relocate the Rosgen-designed structures in a stretch of inaccessible river.

According to a brief interview with interim Town Manager Tamra Allen yesterday, I have it all wrong.

Allen and I looked at the Lacy plans and noted that REP has no intention of relocating the W-shaped and V-shaped “Fishing is Fun” structures designed by hydrologist Rosgen. Those fishing-oriented structures — which cost us nearly \$400,000 in 1995 — would simply disappear and be replaced by U-drop, kayak-oriented structures. Farther downstream, the Lacy plan shows some “J-Hook” structures. I am not clear if those are aimed at enhancing fishing.

According to Allen, the “new easements” being negotiated with Whittington — and possibly with other property owners along the river as well — have nothing to do with fishing access and would not include any riverbank easements. The new easements would include merely the riverbed property — the land underneath the water where the new Lacy-designed U-drop structures would be placed.

Allen suggested that the Springs Resort easement was absolutely necessary to the Lacy project, but that other downstream easements might conceivably be worked around.

I asked Allen how much was budgeted for all this work. I had naturally suspected, if the original work in 1995 had cost nearly \$400,000 and the new work would cover much of the same area PLUS move the Rosgen structures farther downstream — and since the 2005 Contractor Agreement with REP specifies the creation of “biddable” documents — that the Town must have budgeted around \$500,000 for the white water park construction.

Again, it seems I had it all wrong. Allen said the Town has about \$50,000 in its budget — the total amount allocated for our new white water park, including, I assume, the new easements. The Rosgen structures would not be replaced; they would simply disappear into Pagosa's history.

The new easements are necessary, Allen said, because the old easements applied only to the Rosgen structures.

In 1995, the easements alone had cost the Town \$100,000. Now Allen was telling me the total budget for a white water park was \$50,000. Fascinating — about 1/8th of the 1995 budget. How would the Town pay for the construction of its new water park?

“We have not bid any of the work. Most of it has been volunteer in the past, and we anticipate that it will largely be a volunteer project, with Davey Pitcher from the ski area providing tractor and backhoe work like he did before [helping build the Davey Wave]. There will obviously be some materials costs associated with the concrete. We have boulders already purchased and we’ll continue to pay our design contractors, REP, for their work.”

The question obviously arises, I suppose: with such an under-capitalized \$50,000 budget, and noting a cost of over \$100,000 spent on easements for the 1995 project, is the Town in the awkward position of negotiating away all of its geothermal water rights simply to get the necessary easements from the Springs Resort — for a white water park it can’t afford to bid out?

And how do the town's fishermen feel about losing all those fishing enhancements?

Tangled Waters, Part Five

Bill Hudson | 7/11/08

Several years ago, the Town of Pagosa Springs did a survey of its sewer system, and found a large quantity of water coming from a central downtown building — formerly a single building, but now owned as two separate stores by Ben Lynch and Jeff Greer. Looking into the problem, Lynch, Greer and the Town found an old geothermal well, improperly capped and pouring highly-mineralized geothermal into the town sewer lines, at a rate of about 30 gallons per minute.

Not a healthy situation for an already-overloaded sewer system. And probably the cause of the annoying “egg-smell” about which Greer’s tenants had been complaining.

Several tens of thousands of dollars later, Lynch, Greer and the Town had re-directed the geothermal leak through a pipe running under Main Street and into a new “water feature” beside the San Juan Riverwalk, from where it emptied into the river — thus saving the Town considerable trouble at the sewer end of things.

As Greer looked into his building’s basement one day, watching the gallons of mineral water headed for the river, he began to wonder whether that water could be put to some community use. He began to research water rights and geothermal mineral water chemistry, and decided that locals and visitors might enjoy a Main Street mineral spa location. He acquired the rights to use the well water for recreational bathing before sending it into the San Juan River, and started construction on a new downtown spa.

A few months ago, the Town Council sent out a Request for Proposal on a different downtown well known as

the Rumbaugh Well and Ditch. That well had water rights that included building heating, sidewalk de-icing, car washing, and recreational bathing — but no one was making use of those adjudicated rights. Under Colorado law, a water right that goes unused for a significant length of time can be revoked — entailing expensive legal processes to re-establish the water right later on, if needed. So the Town had an interest in seeing the Rumbaugh Well put to a “beneficial use” as required by Colorado water law.

Copies of the RFP were reportedly sent to Greer, the Springs Resort and the Spa Motel — three businesses potentially interested and capable of making use of the Rumbaugh Well resource.

According to Greer’s research, however, it appeared that the Rumbaugh Well water right was limited to use within the original Pagosa Springs survey — in other words, within the old original downtown area. That apparently left the Springs Resort and the Spa Motel outside the allowed area of use. Greer decided to respond to the RFP, and was the only respondent to reply by the deadline. The Town Council voted unanimously to accept Greer’s offer, and directed Town staff to write up a legal contract to lease the water to Greer’s new downtown spa.

That lease document was up for approval at this month’s July 1 Town Council meeting, but the approval was tabled by Mayor Ross Aragon. It appeared that the Springs Resort had questions about the resort’s legal right to the Town’s water — including the Rumbaugh Well — based on the resort’s 1997 lease for the Town’s geothermal “waste water.”

One of the joys of the English language is its versatility. A section of a written contract may seem to mean something very obvious to my lawyers, but may mean something totally different to your lawyers. The question then becomes: can I afford to pay my lawyers more than you are paying your lawyers?

Bill Whittington, representing the Springs Resort, is negotiating with the Town for additional geothermal water from the Town’s PS-5 well. That well’s water rights do not specify use for “recreational bathing,” but only for “municipal use associated with geothermal heating.” By comparison, the adjudicated rights to the Rumbaugh Well specifically mention “recreational bathing” as an allowed use.

How shall our lawyers interpret those facts?

As noted in earlier articles, our new Division 7 Water Commissioner Pet Kasper has sent the Town staff a clarification letter, stating that in his opinion, the Town may not sell geothermal water to the Springs Resort unless the Town first uses it for its own geothermal heating purposes.

The Town’s water lawyer, Janice Sheftel, says it is perfectly legal to lease water from the PS-5 well to the Springs Resort, whether the Town uses it first or not.

So we find the Pagosa Springs Town Council in a quandary. Two prominent local businessmen are asking for geothermal water. Both want to increase the bathing opportunities for people living in and visiting Pagosa Springs.

Differing opinions about legal rights are on the table.

Whittington has Town-approved sketch plans for a \$250 million resort expansion over the next ten or so years, but is asking for a very large amount of mineral water — 400gpm — from a source that the Water Commissioner says cannot be used for resort purposes. Such a resort expansion would no doubt employ many dozens of local contractors and, eventually, many dozens of regular full-time employees.

Greer has an approved but unsigned lease for 35gpm, and is in the midst of spending probably less than \$1

million converting an old retail space in the center of downtown Pagosa. The new spa may employ a handful or two when it's up and running.

It is not clear, from the past research, how much water can be pumped from the Great Pagosa Springs Aquifer — the single aquifer that apparently supplies every mineral spring and well in the downtown area — before the uses begin to drain the aquifer faster than it can be replenished. According to the person probably the most familiar with the geothermal resource, former Springs Resort owner Matt Mees, the aquifer should be able to pump out about 1,200gpm without any problem.

Doing the math, based on my own limited information, the multi-million dollar Springs Resort may now using around 300gpm at the height of its geothermal use. A \$250 million expansion would have a real estate value of perhaps ten times the current market value.

Would such a large resort complex — ten times the current size — also require access to ten times the current amount of geothermal mineral water? That would add up to about 3,000gpm — well over two times what Mees suggests is available to all users.

Does the Town think it wise to put all its egg-smelling water in one basket — even if such a move might support a project with a substantial economic benefit to the whole community? What is the value to keeping the geothermal water use diversified — and accessible to many different users and uses?

Throw into the tangled water story, the Town's stalled "river restoration" kayak park in the San Juan River, and the easements needed from Whittington's resort before that minimally-funded project can proceed. Have we asked all the right questions about that project? Do we really want to tear out \$300,000 worth of grant-funded fishing enhancement structures — which historically have also attracted boaters — to try and complete an even more extensive river project with a mere \$50,000 and volunteer labor?

Certainly we have numerous boaters in town who support the new kayak park idea — but we also have many fishermen who currently use the river. Many of those fishermen are also visitors at the Springs Resort, and at the Spa Motel.

How will the fishermen feel about casting their line into a kayak park full of boaters?

After two weeks of researching these tangled water issues, I feel like I have barely scratched the surface of a myriad of questions surrounding our local geothermal resource — and the planned San Juan River white water park, now related to the geothermal resource due to the easement negotiations with the Springs Resort. I don't envy the Town Council, tasked with making the best decision about so many interrelated water issues — issues that will change the character of Pagosa Springs for many years to come.